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# Legal Analysis of the Sino-Soviet Frontier Disputes

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## I. Introduction

From the beginning of its relations with the Western powers in the mid-19th century, China has suffered enormous humiliation from the effects of "unequal treaties"<sup>1</sup> concluded with Russia. Peking's warlord government as well as the Nationalist and Communist regimes have been obsessed with the situation. In fact, the unequal treaties were among the paramount causes for the republican and Communist revolutions.<sup>2</sup> By 1943, the Nationalist government concluded some new and equal treaties with several Western Powers replacing older treaties, but it had to sign a new, unequal treaty in 1945 with the Soviet Union as prearranged by the Yalta Agreements.<sup>3</sup> When the Communists came to power in 1949, the Chinese government had to accept restrictions imposed by the 1945 Treaty and several older treaties, especially those concerning the borderlands.<sup>4</sup> The new government also entered into a treaty with the Soviets.<sup>5</sup> Acceptance of the treaty restrictions

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1. See CHIANG KAI-SHEK, *CHINA'S DESTINY* 51-67, 76-107 (1947); see generally, CHIANG KAI-SHEK, *SOVIET RUSSIA IN CHINA* (1957).

2. SUN YAT-SEN, *THREE PRINCIPLES OF THE PEOPLE* (SAN MIN CHU I) 15-95 (1932); HSIAO YU, *MAO-TSE-TUNG AND I WERE BEGGARS* 55-88 (1959).

3. Treaty of Friendship and Alliance Between the Republic of China and the U.S.S.R., Aug. 14, 1945, China-U.S.S.R. English text in R. GARTHOFF, *SINO-SOVIET MILITARY RELATIONS* 203-213 app. A (1966) [hereinafter cited as GARTHOFF].

4. See notes 35-38 *infra*.

5. Treaty of Friendship, Alliance, and Mutual Assistance Between the People's Republic of China and the U.S.S.R., Feb. 15, 1950, China-U.S.S.R., and related agreements of 1950, 1952, 1954, reprinted in GARTHOFF, *supra* note 3, at 214-221 app. B.

accounts in part for the present Peking Government's difficulties and disputes with Russia.

At present, no acceptable definition of "unequal treaty" has been advanced. Any treaty between or among nations which purports to reach agreement when the parties are not on equal footing in accordance with the principles of international law is an "unequal treaty". This definition includes treaties founded on grants of special position, privileges, spheres of influence and especially, territories taken away from one nation by another.

Both the Nationalist Chinese Treaty of 1945<sup>6</sup> and the Communist Chinese treaty of 1950<sup>7</sup> can be considered "unequal treaties", although the terms of the latter instrument are somewhat less unequal. Evidently, common Marxist ideology and Soviet Communist brotherhood are not persuasive influences when national interest is involved.

Credit must be given to the Chinese Communist regime in its effort to rid China of unequal diplomatic and political treatment by Russia. By 1955, the Soviet special position in Manchuria, including the Port Arthur Naval Base<sup>8</sup> and the Chinese Changchun Railway,<sup>9</sup> was relinquished. In the Sinkiang area, the Soviets also abolished the Sino-Soviet joint stock companies<sup>10</sup> established in 1950 for the exploitation of oil, minerals and other resources. Thus ended the long involvement of Russia in Chinese internal affairs and China regained complete sovereignty in these areas. Mongolia, however, completely separated itself from China while maintaining nominal independence in the Soviet orbit.

The five years of 1950-1955 were comfortable ones in the new Sino-Soviet relations. The Russians provided some economic and technical aid to China and Chinese "volunteers" were fighting in Korea at the behest of Stalin. But signs of strain were becoming apparent. First, Mao Tse-tung spent sixty days negotiating the Sino-Soviet treaty<sup>11</sup> at a

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6. Treaty of Friendship and Alliance, *supra* note 3.

7. Treaty of Friendship, Alliance and Mutual Assistance, *supra* note 5.

8. Port Arthur comprised an area of 1,338 square miles with a population of 1,370,000. The special position which Russia had enjoyed in Manchuria allowed the Soviets to maintain and deploy their army, navy and air force in the Port Arthur area.

9. The Soviets enjoyed the joint ownership and administration of the Chinese Changchun Railway, formerly the Chinese Eastern Railway, which traverses both North and South Manchuria.

10. On March 27, 1950, China had signed with Russia the following agreements: (1) Sino-Soviet Joint Stock Company for Exploration of Petroleum; (2) Sino-Soviet Joint Stock Company for Prospect of Nonferrous and Rare Metals; (3) Sino-Soviet Joint Stock Company for Civil Aviation (over routes: Peking-Chita, Peking-Irkutsk and Peking-Alma-Ata).

11. Treaty of Friendship, Alliance, and Mutual Assistance, *supra* note 5.

time when he was needed in China. Detailed information about the negotiations is still not available, but the long negotiating period indicates that difficult bargaining sessions were necessary to effect the treaty. Second, the Russians originally had promised to return the Port Arthur base to China by the end of 1952 but they retained control of the base until 1955, ostensibly by "invitation" of the Chinese. Russia continued practicing a century-old imperialism while China was championing territorial integrity and sovereign equality. China was no longer a weakened political power vying against a strong Russia; both were now dynamic powers. By 1956-1957, the strained relations between the two neighboring powers erupted into a pronounced split both in Marxist ideology and in Sino-Soviet border policies for disputed frontiers. The Western world learned of the ideological disharmony long before news of the border dispute was allowed out of the Sino-Soviet political arena. Both sides maintained a policy of strict secrecy regarding the frontier disagreements. Chou En-lai later stated that "the issue was kept secret because the Sino-Soviet dispute was not public at the time."<sup>12</sup>

The Sino-Russian frontier problem is particularly important not only because Russia is a super power but also because the two countries share the longest land boundary in the world. Its total length is approximately 5,500 miles: 2,000 miles in Manchuria, 2,000 miles in Sinkiang and 1,500 miles with Outer Mongolia which is, in effect, a part of the Soviet Union. This article will explore some of the problems involved in the resolution of disputes over this extremely long boundary between China and the Soviet Union.

## II. Chinese Territorial Claims against Russia

### A. Development of the Claims

The Western world began to learn of the Chinese-Soviet territorial question in 1962-1963. Mao Tse-tung finally brought the problem into the open when he talked to a Japanese Socialist Party delegation in Peking on July 10, 1964. In the interview, he supported Japanese claims to the Kurile Islands and criticized the Soviet Union for its territorial ambitions.

There are too many places occupied by the Soviet Union. In accordance with the Yalta Agreement, the Soviet Union, under the pretext of assuring the independence of Mongolia, actually placed the coun-

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12. Interview with Chou En-lai in Tokyo (Aug. 1, 1964), *reprinted in* D. DOOLIN, *TERRITORIAL CLAIMS IN THE SINO-SOVIET CONFLICT* 46 (1965) [hereinafter cited as DOOLIN].

try under its domination. . . . In 1954, when Khrushchev and Bulganin came to China, we took up this question but they refused to talk to us. . . . Some people have declared that the Sinkiang area and the territories north of the Amur River must be included in the Soviet Union. The Soviet Union is concentrating troops along its border.<sup>13</sup>

In his criticism, Mao emphasized three points: (1) the 1954 Soviet domination of Mongolia, (2) the Soviet Union designs in Sinkiang and territories north of the Amur River and (3) the concentration of Soviet troops along the Chinese border which posed a threat to Peking.

In the same interview, Mao also indicated that the Soviet Union, which has an area of 22 million square kilometers and a population of only 220 million, has an unusually light population density. Mao stated that Russia would have to account for the territories which China had lost to Russia.

About a hundred years ago, the area to the east of (Lake) Baikal became Russian territory, and since then Vladivostok, Khabarovsk, Kamchatka and other areas have become Soviet territory. We have not yet presented our account for this list.<sup>14</sup>

On July 19, Chou En-lai in supporting Mao's claim, revealed that in January, 1957, he had raised the territorial issues covering Japan, China, the Middle East and the Eastern European countries including Finland. He also could not get a satisfactory answer from the Russians through Khrushchev.<sup>15</sup> Thus the Sino-Soviet territorial disputes developed in 1954, two years before the ideological split in 1956.

The first open disagreement on the territorial issue resulted from the Cuban missile crisis of October, 1962. At the time of the crisis, China and India were in the midst of a frontier war. Russia supported India and reproached China for its position. In response, the Chinese criticized Soviet "adventurism" in stationing missiles in Cuba and "capitulationism" in removing the missiles to avert a possible nuclear collision with the United States. Subsequently, Khrushchev attacked the Chinese stand with regard to Hong Kong and Macao as being a "double standard" because it represented remnants of colonialism.<sup>16</sup>

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13. Excerpts from *Chairman Mao Tse-tung Tells the Delegation of the Japanese Socialist Party that the Kuriles Must Be Returned to Japan*, reprinted in DOOLIN, *supra* note 12, at 43. (Text of the interview first appeared in Sekai Shūhō, Tokyo, Aug. 11, 1964).

14. *Id.* at 44.

15. *Id.* at 45-46.

16. *Id.* at 28. "But does anyone accuse China because remnants of colonialism remain

The Chinese reacted sharply.<sup>17</sup> In an official editorial addressed to the Soviets, the Chinese Communist Party brought up the subject of the unequal treaties. The Party listed nine treaties, three of which were imposed upon China by Czarist Russia, and which remained in force despite the Karakhan declarations.<sup>18</sup> The Chinese statement ended on a threatening note which challenged Russia to consider that opening the Hong Kong and Macao questions might force a reconsideration of unequal treaties per se.<sup>19</sup>

The first unofficial accounts of border violations between Russia and China appeared shortly after the Chinese editorial statement. The Jen-Min Jih-Pao<sup>20</sup> and Hung-chi<sup>21</sup> jointly stated that in April and May 1962, the leaders of the Soviet Communist Party used their personnel in Sinkiang to carry out "large-scale subversive activities in the Ili region and enticed and coerced several tens of thousands of Chinese citizens into going to the Soviet Union."<sup>22</sup> In reply, the Soviets accused the Chinese of provoking more than 5,000 border incidents in the single year of 1962.<sup>23</sup>

On January 3, 1964, Khrushchev sent a message to the heads of state of other countries proposing an international agreement or treaty on the renunciation of the use of force in resolving territorial disputes or questions of frontiers. The Sino-Indian frontier war had just been concluded and the Central Committee of the Chinese Communist Party in a letter to its Soviet counterpart compared the Soviet leaders to the "reactionary nationalists of India who have deliberately created border disputes with China."<sup>24</sup> The letter declared that China had satisfactorily settled complicated boundary questions with Burma, Nepal,

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untouched on her territory? It would be incorrect to prod China into taking actions that she regards as premature." *Id.*

17. *A Comment on the Statement of the Communist Party of the U.S.A.*, Jen-Min Jih-Pao, Mar. 8, 1963.

18. Text reprinted in *Sino-Russian Relations, The Karakhan Declarations of 1919 & 1920* [1924] CHINA YEARBOOK 868-87.

19. Excerpts from *A Comment on the Statement of the Communist Party of the United States of America* (editorial) Jen-Min Jih-Pao, Mar. 8, 1963, reprinted in DOOLIN, *supra* note 12, at 29-31. "You are not unaware that such questions as those of Hong Kong and Macao relate to the category of unequal treaties left over by history, treaties which the imperialists imposed on China. It may be asked: In raising questions of this kind, do you intend to raise all the questions of unequal treaties and have a general settlement? Has it ever entered your heads what the consequences will be?" *Id.*

20. The English translation of Jen-Min Jih-Pao is *The People's Daily*.

21. The English translation of Hung-chi is *The Liberation Army Daily*.

22. English text of the joint statement in 37 *Peking Review* 6-23 (1963).

23. DOOLIN, *supra* note 12, at 32.

24. Letter of Feb. 29, 1964 reprinted in 19 *Peking Review* 12-18 (1964).

Pakistan, and Afghanistan.<sup>25</sup> In addition, the letter disclosed that the Chinese and Soviet Governments' delegations had started boundary negotiations in Peking on February 25, 1964. China reiterated its stand on this issue, "Although the old treaties relating to the Sino-Russian boundary are unequal treaties, the Chinese Government is nevertheless willing to respect them and take them as the basis for a reasonable settlement of the Sino-Soviet boundary question."<sup>26</sup>

Prior to the Sino-Soviet negotiations in Peking, the Soviet Union opposed the Chinese position concerning the borders by denying that the 19th century border treaties were "unequal". The Soviets flatly declared that they had no territorial conflicts with any of their neighboring states.<sup>27</sup> In a speech to the Central Committee of the Soviet Communist Party on February 14, 1964, Mikhail Suslov, an influential member of the Soviet Presidium, assailed the Chinese violation of border lines and declared that "our standpoint is that any territorial problem between Soviet Russia and China does not exist, and that the Sino-Soviet border is historical and habitual . . . only those particular localities which are controversial in nature can be respectively examined."<sup>28</sup> Thus the boundary negotiations initially were doomed to failure and were broken off without results in September, 1964.

In response to the statement by Chairman Mao concerning the historical bases of China's border claims, *Pravda* issued a lengthy editorial on September 2, 1964, charging the Chinese with an expansionist program with far-reaching pretensions designed to acquire *lebensraum* in Soviet territory.<sup>29</sup> The editorial refuted the historical arguments advanced by China by pointing out that those arguments were not factually accurate.

It is well known that in the middle of the Seventeenth century China's possessions reached only to the Khingan Mountain Range, i.e., considerably to the south of the Amur River. The territories to the north of Khingan were populated by local indigenous tribes—

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25. *Id.*

26. See Clubb, *Armed Conflict in Chinese Borderlands 1917-50*, reprinted in GARTHOFF, *supra* note 3, at 9-19. See also Soviet letter to China, Nov. 29, 1963, in F. WATSON, *THE FRONTIERS OF CHINA* 178 (1966). "Any attempt to ignore historically-formed boundaries between States can become the source of misunderstandings and conflicts." *Id.* at 179. (Note that it is common practice for the Soviet and the Chinese Communist parties to exchange views by letter).

27. *Le Monde*, Apr. 11, 1969, at 2, col. 5.

28. TSAI PING-YUAN, *AN ANALYTICAL SURVEY OF BORDER DISPUTES BETWEEN SOVIET RUSSIA AND COMMUNIST CHINA* 7 (1965). Jen-Min Jih-Pao editorially criticized this speech in an article entitled *Anti-Chinese Report*, Apr. 27, 1964.

29. *Pravda*, Sept. 2, 1964, English text in DOOLIN, *supra* note 12, at 47-57.

Evenks, Daurs, and so forth—who were subjected from time to time to raids by the Manchu and Chinese population in the Amur Valley. The process of the definition of actual borders took place with the annexation by Russia of the northern half of the Amur Basin and of the southern part by China. More than a hundred years ago, this state of the border was fixed in the Aigun and Peking treaties. . . Have those who question the inclusion in the Soviet Union of territory of more than one and a half million square kilometers considered how these claims will be taken by Soviet people who have lived and worked on this land for several generations and consider it their homeland, the land of their ancestors? That is why we say that the present border has developed historically and was fixed by life itself, and past treaties regarding the border cannot be disregarded.<sup>30</sup>

The editorial also attacked Mao's assessment of Outer Mongolia.

Everybody knows that the Mongolian People's Republic has been a sovereign socialist state for more than forty years and enjoys all the rights to settle their destiny themselves. . . . N. S. Khrushchev naturally refused to discuss . . . and told the Chinese leaders that the destiny of the Mongolian people is not determined in Peking or Moscow but in Ulan Bator and that the question of Mongolia's statehood can be settled only by that country's working people and nobody else.<sup>31</sup>

Although the *Pravda* editorial did mention Sinkiang, apparently Khrushchev thought that it should not be omitted. When he gave an interview to a Japanese Diet delegation on September 19, 1964, he singled Sinkiang out.

Let us take Sinkiang, for example. Have the Chinese been living there from time immemorial? The Sinkiang indigenous population differs sharply from the Chinese ethnically, linguistically and in other respects. Chinese emperors conquered them in the past and deprived them of their independence.<sup>32</sup>

Khrushchev's statement infuriated the Chinese Communists because it claimed that Sinkiang did not belong to China. Saifudin, Chairman of the Sinkiang Uighur Autonomous Region answered Khrushchev on October 1, 1964, in one of the fiercest statements in the Sino-Soviet conflict.

If the Khrushchev revisionists dare to stretch out their evil hands to

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30. *Id.*

31. *Id.*

32. Tass International Service, Moscow, Sept. 19, 1964, *reprinted in* in DOOLIN, *supra* note 12, at 70-71.



invade and occupy our territory, they will certainly be repulsed. . . . Their evil hands will be cut off as relentlessly as were those of the Indian reactionaries when they invaded China.<sup>33</sup>

Sinkiang, Outer Mogolia and Manchuria were the main frontier regions in which borders were contested by Russian and Chinese powers, and China had decided to reclaim the lost territories along these frontiers. The Peking Government announced in a formal statement that Russia had exceeded the provisions of the earlier treaties.

There exists a boundary question between China and the Soviet Union not only because Czarist Russia annexed more than 1.5 million square kilometers of Chinese territory by the unequal treaties it imposed on China but also because in many places it crossed the boundary lines stipulated by the unequal treaties and further occupied vast expanses of Chinese territory.<sup>34</sup>

## B. Four Principal Treaties

There are four principal treaties dealing with the Sino-Soviet border: (1) the Treaty of Aigun<sup>35</sup> in which the Russians obtained a large area north of the Amur and west of the Sungari rivers; (2) the Treaty of Peking<sup>36</sup> by which the Russians annexed territory east of the Sungari and Ussuri rivers; (3) the Tahcheng Protocol to the Treaty of Peking<sup>37</sup> when Russia acquired additional territories in western China; (4) the Treaty of St. Petersburg<sup>38</sup> (sometimes referred to by the Chinese as the Treaty of Ili) when China lost to Russia more territories near Ili.

According to Peking's calculations, these territories amount to more than 1.5 million square kilometers. The breakdown is as follows: 600,000 square kilometers by the Aigun Treaty; 400,000 by the Peking Treaty; 440,000 by the Tahcheng Protocol; and 70,000 by the St. Peters-

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33. The speech was broadcast over Urumchi radio for a National Day rally in Urumchi.

34. Statement of the Government of the People's Republic of China, May 24, 1969, published by the Foreign Languages Press, Peking (1969). For details see text accompanying notes 50 & 86-99 *infra*.

35. Aigun Treaty of Friendship and Boundaries, May 16-28, 1858, China-Russia I TREATIES, CONVENTIONS BETWEEN CHINA AND FOREIGN STATES 81-82 (Shanghai, Statistical Department of the Inspectorate General of Customs Service, 2d ed. 1917) [hereinafter cited as Treaty of Aigun].

36. Peking Additional Treaty of Commerce, Navigation and Limits, Nov. 14, 1860, China-Russia, *reprinted in* E. HERTSLET, I CHINA TREATIES 461-71 (1908) [hereinafter cited as Treaty of Peking].

37. Tahcheng Protocol to the Treaty of Peking, Oct. 7, 1864, China-Russia, *reprinted in* E. HERTSLET, *supra* note 36, at 472-78 [hereinafter cited as Tahcheng Protocol].

38. Treaty of St. Petersburg, Feb. 24, 1881, China-Russia, *reprinted in* E. HERTSLET, *supra* note 36, at 483-92 [hereinafter cited as Treaty of St. Petersburg].

burg Treaty. These Chinese calculations of lost territories correspond with those given by *Pravda* in its editorial of September 2, 1964,<sup>39</sup> and the statement of Mikhail Suslov.<sup>40</sup>

In addition, the Chinese Communists claimed another 2.6 million square kilometers of territory now constituting the Soviet republics of Kazakhstan, Kirghizia, Uzbekistan, and Tadzhikistan, as well as 1.44 million square kilometers which are now occupied by Outer Mongolia. The total lost territory thus claimed by the Chinese would be 5.5 million square kilometers, encompassing 20 million Soviet and Mongolian residents.<sup>41</sup>

The Chinese claims are serious. According to one observer, "the Chinese give every evidence of a genuine ambition to recover the actual lands lost to Czarist Russia, or at least substantial portions."<sup>42</sup> At one time, the Chinese Communists believed that the Russians might return the lost territories as a comradely act.<sup>43</sup> Theoretically, such belief has an historical foundation. For example, Lenin was the first Communist official who condemned the Czarist predatory taking of Chinese lands as "a criminal policy" and charged the "European imperialists," including Russia, with the deliberate partitioning of China.<sup>44</sup> His pronouncement implied a principle of restoration of lands seized by the czars and national determination by subject peoples. This historical foundation is also established in the declaration by Leo Karakhan, Acting Commissar of Foreign Affairs, proclaiming that "all secret treaties made before the revolution with China, Japan, or the allies are hereby abrogated," and that "the Soviet government has renounced the conquests made by the Czarist government which deprived China of Manchuria and other areas. . . . The Soviet government abolishes all special privileges and gives up all factories owned by Russian merchants on Chinese soil."<sup>45</sup> Karakhan specifically renounced the Russian rights to the Chinese Eastern Railway and Russia's share of the Boxer indemnity.<sup>46</sup> He then proposed to enter into negotiations with the Chinese Government on the abrogation of the treaties and agreements disadvantageous to China and the return to the Chinese people of everything that was taken from them by the

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39. *Pravda*, Sept. 2, 1964, reprinted in DOOLIN, *supra* note 12, at 47-57.

40. See text accompanying note 28 *supra*.

41. H. SALISBURY, *WAR BETWEEN RUSSIA AND CHINA* 136 (1969).

42. *Id.* at 136-37.

43. *Id.* at 137.

44. *Id.*

45. See *Karakhan Declarations*, *supra* note 18, at 868-69.

46. *Id.* at 869.

Czarist government independently or together with Japan or the allies.<sup>47</sup>

The Karakhan declaration caused a tremendous stir in China and promoted enormous good will toward the Soviets. His declaration was the precipitating influence on Mao Tse-tung's decision to join the Chinese Communist Party which was founded the following year, and it was also one of the factors influencing Dr. Sun Yat-sen to lead the Kuomintang to cooperate with the Chinese Communists.<sup>48</sup> But when the time came for actual negotiations in 1924, the Soviets did not relinquish any territorial rights, nor did they consider the border question from the viewpoints advanced in the declaration. From 1919 to the present day, the Soviets not only have not given up to China a single square kilometer of territory taken by the Czars, but also they detached Outer Mongolia from China and formally annexed the Tannu-Tuva region between Sinkiang and Mongolia in 1944. The latter annexation was kept secret until 1948.<sup>49</sup> Since October 10, 1961, the Tannu-Tuva region has been part of the Soviet Union known as the "Autonomous Socialist Republic of Tuva."<sup>50</sup> In addition, the Soviets retained their special position in Manchuria up to 1955 and promoted the separatist movement in Sinkiang even after the Chinese Communists had come to power.

### III. The 1969 Armed Clashes on the Ussuri

#### A. Background: The 1964 Negotiations

Before taking up the 1969 armed clashes, a brief account of the problems involved in the 1964 negotiations between China and Russia on the border disputes may be helpful. It is interesting to note that both sides claimed that they had initiated the 1964 negotiations.<sup>51</sup>

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47. TAO SHING CHANG, *INTERNATIONAL CONTROVERSIES OVER THE CHINESE EASTERN RAILWAY* 110-27 (1936).

48. See O. CLUBB, *CHINA AND RUSSIA: THE "GREAT GAME"* 167, 230 (1971); see also text of the Sun-Joffe Declaration issued in Shanghai in 1923, in [1924] *CHINA YEARBOOK* 863; A. WU, *CHINA AND THE SOVIET UNION* 312-13 (1950).

49. The annexation was made public by Chiang Kai-shek. CHIANG KAI-SHEK, *SOVIET RUSSIA IN CHINA* 98-99 (English ed. 1957). (Chinese edition appeared in 1952.)

50. INTERDOC, *RUSSIA AND CHINA, A GUIDE TO THE SINO-SOVIET CONFLICT* 40 (undated pamphlet). For a detailed background, cf. P. TANG, *RUSSIAN AND SOVIET POLICY IN MANCHURIA AND OUTER MONGOLIA* 399-425, 427-28 (1959); CHIANG KAI-SHEK, *supra* note 48.

51. For instance, the Chinese government in a statement of May 24, 1969, said, "As early as August 22 and September 21, 1960, the Chinese Government twice took the initiative in proposing to the Soviet Government that negotiations be held." Statement of the

Since the negotiations were secret, it is still difficult to ascertain which side really began the discussions. At any rate, the Soviet side was represented by Deputy Foreign Minister P. I. Zyryanov, and his Chinese counterpart was Tseng Yung-chuan. They started meeting on February 25, 1964, in Peking and discussions terminated in September, 1968, when the Russians called for a change of site to Moscow.

At these discussions, there were three main contentions. First, the Chinese based their claim on ideology, asserting that all pre-1917 treaties were unequal and hence invalid. In other words, the Chinese presented a case of *rebus sic stantibus*, i.e., the old treaties become null and void when conditions have changed. The Russians rejected this view, claiming the continuing validity in international law of the old treaties and pointing to the historical practice of the inhabitants of the area. They stood for the principle of *pacta sunt servanda*, i.e., treaties remain valid unless altered by the parties concerned. In international relations, law and practice diverge: in law, the decisions follow the principle of *pacta sunt servanda*, but in practice the exigencies of power politics often allow the *rebus sic stantibus* principle to prevail.<sup>52</sup>

Second, the Chinese steadfastly upheld the principle of *Thalweg* in the river boundaries, i.e., the dividing line of an international river follows the center of the main channel. According to this principle of international law, most of the riverine islands would belong to China and Soviet occupation of them would be illegal. But the Soviets refused to accept this principle and offered maps and other "legal evidence" to challenge the Chinese claim.

Third, there was a controversy concerning maps. The Chinese rejected the Soviets' map based on the Treaty of Peking of 1860.<sup>53</sup> The map was drawn at a scale of 1:1,000,000 which was far too small to be used to determine ownership with accuracy. The Chinese submitted a larger-scale map of the border to support their position.

The three major areas of contention which were addressed in the 1964 negotiations were not yet satisfactorily resolved when, on March 11, 1969, two incidents of bloodshed occurred at Chenpao Island (which the Russians call Damansky Island). The Chinese Information Department of the Ministry of Foreign Affairs<sup>54</sup> issued a statement recapitulating China's position on the unequal treaties and accusing the

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Government of the People's Republic of China, May 24, 1969, published by the Foreign Languages Press, Peking (1969).

52. See H. BRIGGS, *THE LAW OF NATIONS* 917-18 (2nd ed. 1952).

53. Treaty of Peking, *supra* note 35.

54. Waichiao pu is the Ministry of Foreign Affairs.

Soviet side of unreasonableness.<sup>55</sup> The border situation became worse along the Ussuri River in January, 1967, because of the severity of a new set of river regulations promulgated by China in the previous year.<sup>56</sup> The river regulations introduced a discordant note into Sino-Soviet relations but other sources of friction were apparent. The Russians also accused the Chinese of extremely provocative behavior in connection with Cultural Revolution activities.<sup>57</sup> The growing disharmony between the two powers had set the stage for military activity along the border.

## B. Military Preparations

In the years from 1950 to 1960, Russia surpassed China in weaponry and military logistics support. The disparity in military preparedness was of little concern because of the friendly relations between China and Russia. But by the early 1960's, the Chinese kept 14 infantry divisions in Manchuria, five divisions in Inner Mongolia, and five more in Sinkiang.<sup>58</sup> In addition, the Chinese stationed border guards equivalent in number to two to three divisions and supplemented them with the Production and Construction Corps in Sinkiang and in Inner Mongolia.<sup>59</sup> Altogether, the supplemental divisions would constitute between 420,000 and 450,000 men. The Soviet border personnel numbered 20 to 24 divisions, or between 250,000 and 300,000 men.<sup>60</sup> Despite fewer men and long lines of communication, the Soviets enjoyed a more favorable logistical posture as well as better equipment with the result that the border strength of both sides was in a rough balance.

In 1966, the Soviets not only transferred their highly trained forces from Eastern Europe to the Far East, but also stationed strong military units in Outer Mongolia after the renewal of the 20-year defense pact

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55. Published originally in Jen-Min Jih-Pao, Mar. 11, 1969. In addition, an editorial, *Down with the New Tsars*, was published on March 4 in Jen-Min Jih-Pao, reported in New York Times, May 24, 1969, at 19-25. The statement refused to recognize the treaties as the basis for settling the boundary question between the two countries in its vain attempt to force China to accept a new unequal treaty, and thus to perpetuate in legal form its occupation of the Chinese territory which it seized by crossing the boundary line defined by the unequal treaties. The Chinese side clearly pointed out that if the Soviet side should obdurately insist on such a stand and inexorably refuse to mend its ways, the Chinese side would have to reconsider its position as regards the Sino-Soviet boundary question as a whole.

56. The 1966 regulations were published in New China News Agency, Apr. 19, 1966.

57. T. ROBINSON, *THE SINO-SOVIET BORDER DISPUTE* 19 (1970).

58. N.Y. Times, Aug. 17, 1966, § 1, at 1, col. 4.

59. *Id.*

60. *Id.*

with the Ulan Bator government in January of that year.<sup>61</sup> By November 1967, the Soviets had even established missile bases on Mongolian soil.<sup>62</sup> In the following summer, the Soviets were able to stage their first series of large scale military maneuvers in the Mongolian area. Observers reported that there were six divisions of Russian troops, including one tank division.<sup>63</sup> By 1969, this number had reportedly reached 8 to 10 divisions.<sup>64</sup>

When the Soviets moved their troops and equipment close to the Sino-Mongolian border, the balance of power between the Chinese and Soviet forces was upset. Although the Chinese moved additional forces and equipment to Inner Mongolia and Manchuria, the maneuver was not enough to offset the Soviet buildup. Chinese manpower resources were severely limited because the army was heavily engaged in the complex responsibilities of the Cultural Revolution during this period.<sup>65</sup> Geographically, the Soviet forces were close to Peking, especially when measured from the Chinese border city of Ehrlieng, Inner Mongolia, rather than from Harbin, Manchuria.

### C. The Chenpao Island Armed Conflict

Despite the tension on the Mongolian border, the armed conflict which occurred in 1969 erupted at Chenpao Island and not the Mongolian border because of longstanding disputes over river boundaries. Chenpao Island is located at 133° 51' E longitude and 40° 51' N latitude on the Ussuri River, which forms the boundary between Russia and China in accordance with the Treaty of Peking of 1860.<sup>66</sup> The nearest Russian settlement is Nizhne Mikhailovsky and the nearest Chinese village is Kung-szu. As the main channel of the Ussuri River passes to the east of the island, the Chinese claim ownership in line with the *Thalweg* principle of international law. The island and channel have been described by one authority as uninhabited and distinctly uninviting.

From the location of navigation markers on the two shores and the curvature of the river, it would appear that ships traverse the eastern channel. The island itself is, by testimony of both sides, uninhabited, although Chinese fishermen apparently use it for drying their nets,

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61. N.Y. Times, Aug. 17, 1966, at 4, col. 7.

62. N.Y. Times, Jan. 3, 1968, at 5, col. 1.

63. L.A. Times, July 10, 1968, § 1, at 22, col. 5.

64. N.Y. Times, May 24, 1969, at 3, col. 1.

65. Le Monde, Apr. 13-14, 1969, at 2, col. 5.

66. Treaty of Peking, *supra* note 36.

and both nationalities may do some logging on it. It is about one mile in length, about one-third mile wide, and is flooded during the spring thaw.<sup>67</sup>

An apparent lack of attractive attributes notwithstanding, Chenpao Island was the site where the Chinese and Russians fought two battles on March 2 and March 15, 1969. The first battle was actually a two-hour skirmish which allegedly resulted in more than 30 Soviet border guards and a number of Chinese soldiers being killed or wounded.<sup>68</sup> The second military engagement was a regular battle, involving much larger forces, higher losses, and lasted much longer—nine hours.<sup>69</sup>

Although each side accused the other of initiating military action, at least one disinterested observer noted that the first skirmish could have been initiated accidentally by the Chinese in response to the intrusion of the Soviet guards, but that the second was begun by the Russians for the purpose of pressuring the Chinese to negotiate a settlement of the border issue.<sup>70</sup>

These military actions were the first such incidents between the two Communist giants. Upon learning that the Soviet Government had sent China a note of protest because of the March 2, 1969, incident, Jen-Min Jih-Pao<sup>71</sup> and Jiefangjun Pao<sup>72</sup> expressed the opinion that the Russians had provoked the attack. The Chinese editorial cited the 1860 Sino-Russian Treaty of Peking<sup>73</sup> in defense of the Chinese position. The Treaty contained a relevant provision which stipulated that from the estuary of the Ussuri River southward to Hsingkai Lake, the boundary line shall be along the Ussuri and Sungacha Rivers. Land lying east of these rivers belongs to Russia and the land west of these rivers belongs to China.<sup>74</sup>

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67. ROBINSON, *supra* note 57.

68. Le Monde, Mar. 15, 1969, at 4, col. 4; Le Monde, Mar. 16-17, 1969, at 1, col. 3; Le Monde, Mar. 18, 1969, at 1, col. 1.

69. Newspaper sources indicated that the Russians lost 60 men and the Chinese 800. According to one observer, however, the breakdown between dead and wounded was not clear in the statistics provided by either side. It could be presumed then that the Chinese figure, even if accurate, likely represented both dead and wounded. *Id.*

70. *Id.*

71. Joint Statement, *supra* note 22.

72. *Down with the New Tsars*, *supra* note 55.

73. Treaty of Peking, *supra* note 36.

74. Article I of the Treaty of Peking. Text reprinted in E. HERTSLETT, *supra* note 35. "Henceforth the eastern frontier between the two empires shall commence from the juncture of the rivers Shika and Argun, will follow the course of the River Amur to junction of the River Ussuri with the latter. The land on the left bank (to the north) of the River Amur

The Information Department of the Peking Waichiao pu further amplified its editorial stand with a statement of applicable international law on river boundaries.

According to established principles of international law, in the case of navigable boundary rivers, the central line of the main channel shall form the boundary line which determines the ownership of islands. Chenpao Island and the nearby Kapotzu and Chilichin Islands are all situated on the Chinese side of the central line of the main channel of the Ussuri River and have always been under China's jurisdiction. Chinese frontier guards have always patrolled these islands and Chinese inhabitants have always carried on production on these islands. During the Sino-Soviet boundary negotiations in 1964, the Soviet itself could not but admit that these islands are Chinese territory.<sup>75</sup>

On the day of the second military action,<sup>76</sup> the Waichiao pu sent a note to the Soviet Embassy in Peking charging that a large number of Soviet forces accompanied by armored cars and tanks had intruded on Chenpao and the Chinese waterway to the west of the island. According to the note, the Chinese frontier guards had been compelled to fight back. The Soviets sent reinforcements and then "opened artillery fire on areas deep within Chinese territory."<sup>77</sup> The note concluded with a warning: "The Soviet government must be held fully responsible for all the grave consequences arising therefrom."<sup>78</sup>

In Moscow, the Soviet Government also protested on the very day of the clash to the Chinese Embassy, accusing the Chinese authorities of "new and impudent provocation."<sup>79</sup> The statement also contained a warning, "If new attempts are made to violate the integrity of Soviet territory, the Soviet Union and all of its peoples will defend it resolutely and will oppose a crushing riposte to such violations."<sup>80</sup> It was reported that the Chinese Chargé refused to accept the message but he must certainly have wired its contents to his government.<sup>81</sup>

On March 29, 1969, the Soviet Government issued a statement regarding Sino-Soviet relations in general and the boundary question in

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belongs to the Empire of Russia, and the territory on the right bank (to the south) to the junction of the River Ussuri to Empire of China . . . ." *Id.*

75. *Down with the New Tsars*, *supra* note 55.

76. March 15, 1969.

77. *Down with the New Tsars*, *supra* note 55.

78. *Id.*

79. N.Y. Times, Aug. 16, 1969, at 16, col. 1.

80. *Id.* at 16, col. 2.

81. O. CLUBB, *supra* note 48, at 501; N.Y. Times, Aug. 31, 1969, at 1, col. 2.



particular.<sup>82</sup> As to the Ussuri boundary, the communiqué stated: "In 1861, the two sides signed a map on which the frontier line in the Ussuri region was traced. Near Damansky island, that line passed directly along the Chinese shore of the River. The originals of those documents are held by the Chinese Government as well as by that of the USSR."<sup>83</sup> The statement asserted that the Chinese Government had signified its acceptance of the existing frontiers by concluding an agreement on shipping on the Amur and the Ussuri in 1951 and by obtaining permission from the Soviet authorities to use certain islands in these rivers for logging and hay-making. The Soviets denied that the nineteenth century treaties were unequal but proposed the resumption of 1964 border "consultations" as soon as possible.<sup>84</sup>

#### IV. Points of Dispute and the Protracted Negotiations in Peking

The Soviet Government formally proposed to hold "consultations" on the boundary issue by inviting China to send a delegation to Moscow within four days.<sup>85</sup> Contrary to the usual diplomatic practice, the Soviets made public their note on April 12, 1969, without waiting for a reply from the Chinese Government.<sup>86</sup> The Soviets rebuked the Chinese Government for employing every possible means to conceal from the Chinese people the contents of the statement of March 29th, 1969. In response, the Chinese Government issued a long statement on May 24, 1969, concerning its position on the boundary question and simultaneously published in full the text of the Soviet statement.<sup>87</sup>

The Soviet statement of March 29, 1969, and the Chinese statement of May 24, 1969, are very important documents in the boundary dispute<sup>88</sup> because they set forth the positions and points of dispute of both sides. Analysis of these two statements indicates that the principal

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82. Text of Soviet statement broadcast by Tass, Mar. 29, 1969, *reprinted in Le Monde*, Apr. 1, 1969, at 4, cols. 1-6.

83. *Id.*

84. *Id.*

85. *Note of Hsinhua on Statement of Soviet Government of March 29*, HSINHUA SELECTED NEWS ITEMS, June 2, 1969, at 8 (20 New China News Agency 8) [hereinafter cited as HSINHUA].

86. *Id.*

87. *Id.* at 3-8. The New China News Agency added a note challenging the Soviets with these words: "Here we would like to ask the Soviet Government to do the same and publish in full the text of the statement of the Chinese Government in the Soviet press." *Id.* at 8. To this author's knowledge, the Soviets did not do so. See also CHI HSING, CHENPAO TAO SHIH-CHIEN CHEN-HSING (A TRUE STORY OF THE CHENPAO ISLAND INCIDENT) 59 (1969).

88. HSINHUA, *supra* note 85 at 3-8.

problems involved in the dispute are: (1) the question of river borders, (2) the possibility that present Sino-Soviet treaties are unequal treaties, (3) the issue of whether there is a valid boundary problem, and (4) which country violated the status quo of the boundary.

First, according to the Treaty of Peking of 1860,<sup>89</sup> should the Sino-Soviet boundary be the center of the main channel of the Ussuri River or should the boundary be along the Chinese bank of the Ussuri River? The Treaty itself only stipulated that the Ussuri River should form part of the boundary between China and Russia. The Chinese interpretation follows the established principle of international law that in the case of navigable boundary rivers, the central line of the main channel shall form the boundary line and determine the ownership of islands therein.<sup>90</sup> Chenpao Island is situated on the Chinese side of the central line of the main channel of the Ussuri River, and the Chinese assert that the island "indisputably belongs to China and has always been under China's jurisdiction."<sup>91</sup>

The Soviet Government invoked the map attached to the Peking Treaty<sup>92</sup> to support their view that in the area of Chenpao Island the demarcation line shown "passes directly along the Chinese bank of the Ussuri River"<sup>93</sup> and therefore the island in dispute should belong to Russia. The Chinese noted that the map was drawn unilaterally by Czarist Russia before the boundary was surveyed in 1861.

[I]n 1961, China and Russia surveyed and marked only the land boundary south of the Hsingkai Lake but not the river boundary on the Wusuli [i.e., Ussuri] and Heilung [Amur] rivers, and a red line was drawn on the attached map on a scale smaller than 1:1,000,000 only to indicate that the two rivers form the boundary between the two countries. The red line on this attached map does not, and cannot possible, show the precise location of the boundary line in the rivers, still less is it intended to determine the ownership of islands.<sup>94</sup>

The Chinese cited three factors in support of their position. (a) On May 8, 1908, the Russian Commissar of the Amur Region wrote to a Chinese official that if countries are divided by a river, then the line running along the middle of the river should be taken as the boundary line between them: on navigable rivers, this line should be drawn

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89. Treaty of Peking, *supra* note 36.

90. See G. VON GLANN, *LAW AMONG NATIONS* 303 (1976).

91. HSINHUA, *supra* note 85, at 4.

92. Treaty of Peking, *supra* note 36.

93. *Id.*

94. HSINHUA, *supra* note 85, at 4.

along the channel.<sup>95</sup> Later the same year, he wrote: "Islands in the rivers are divided by the river channel."<sup>96</sup> (b) During the Sino-Soviet boundary negotiations in 1964, the Soviet representative "could not but agree that the central line of the main channel should be taken for determining the boundary line on the rivers and the ownership of islands."<sup>97</sup> (c) Chenpao was originally not an island, but a part of the bank on the side of the Ussuri River. It later became an island as a result of erosion by the river water. "To this day, Chenpao Island still connects with the Chinese bank at low water, and the river-arm to the west of the Island has never become a waterway."<sup>98</sup>

To dispute Chinese claims, a Soviet note of June 15, 1969,<sup>99</sup> pointed out that the protocol on the exchange of maps was signed in 1863 by the representatives of both countries and that a red line on the map showing the Sino-Soviet border runs directly along the Chinese bank of the river in the vicinity of Chenpao (or Damansky in the Russian note). The Soviet note then proceeded to challenge the applicability of the *Thalweg* principle in this dispute:

It is common knowledge that in international law there is no norm that automatically establishes the border line on frontier rivers as running along the middle of the river's main channel. In concluding treaties involving such situations, states mark the border in the way that they believe most suitable and in accordance with the circumstances. There are examples in interstate relations in which a border has been established along the bank of a river, not along its channel. The 1858 treaty between Costa Rica and Nicaragua stipulates that the border line runs along the right bank of the San Juan River, and that 'the Republic of Nicaragua has the exclusive right of possession and sovereign jurisdiction with respect to the waters of this river.' . . . The 1860 Russo-Chinese Treaty of Peking is another such example.<sup>100</sup>

One day after it had agreed to resume negotiations with the Soviet representative in Peking, the Chinese Government issued another statement refuting the Soviet position:

The attached map is on a scale smaller than 1:1,000,000. The red line

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95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. Note from the Soviet Government to the Peking Government dated June 15, 1969, reprinted in *Soviet Note on Border Conflict with China* 21 (No. 24) CURRENT DIGEST OF THE SOVIET PRESS 9 (July 9, 1969).

100. *Id.* at 11.

on it only indicates that the rivers form the boundary; it does not, and cannot possibly, show the precise location of the boundary lines in the rivers. In order to deny the principle of international law that the central line of the main channel shall form the boundary line in the case of navigable boundary rivers, the Soviet Government cited as an example the treaty concluded between Costa Rica and Nicaragua in 1858 . . . moreover, it imprudently alleged that the "Sino-Russian Treaty of Peking" was likewise a case in point. Of course, there are exceptions to any established principle of international law, and the same is true of the principle that the central line of the main channel shall form the boundary in the case of navigable boundary rivers. But explicit stipulations must be made in treaties for any exceptional case. Articles II and VI of the 1858 boundary treaty between Costa Rica and Nicaragua do contain such stipulations. Now we want to ask the Soviet Government: Where is it stipulated in the "Sino-Russian Treaty of Peking" that the boundary line between China and Russia runs along the Chinese bank of the Heilung [Amur] and Wusuli [Ussuri] rivers? And where is it stipulated that Czarist Russia "enjoys exclusive right of possession and sovereign jurisdiction" over the Heilung and Wusuli Rivers?<sup>101</sup>

The merit of the Chinese argument that it is impossible to denote a boundary along a river bank using a map on a scale smaller than 1:1,000,000 is a legal problem of interpretation of treaties. The issue might well be resolved by third-party arbitration or by adjudication of the International Court of Justice.

Second, are the existing treaties relating to the present Sino-Soviet boundary unequal treaties? The Soviet statement insisted that the current Russian-Chinese boundary in the Far East had been shaped "as a result of historical processes" over a long period.<sup>102</sup> This boundary had been legally stipulated through the Treaties of Aigun,<sup>103</sup> Tientsin,<sup>104</sup> and Peking,<sup>105</sup> and the Soviet Government considered those treaties which delimited boundaries as not being unequal treaties. While the Bolshevik Government led by Lenin espoused the principle of annulment of unequal treaties concluded by the Czarist Government with China, the present Government rejected the principle in stating that

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101. Statement of Oct. 8, 1969, in 12 PEKING REVIEW 14-15 (1969).

102. Soviet statement of March 29, 1969, *supra* note 82.

103. Treaty of Aigun, *supra* note 35.

104. Treaty of Tientsin, June 13, 1858, China-Russia. The treaty dealt primarily with trade rights and routes, but Article 9 indicated that undefined sections of the boundary between the two nations would be investigated "without delay." English text in O. CLUBB, *supra* note 81, at 85-86.

105. Treaty of Peking, *supra* note 36.

unequal treaties "did not include the treaties for defining the boundaries between the two countries . . . there is no question as to their annulment or revision."<sup>106</sup>

China advanced the argument that Czarist Russia, a European country, was originally not contiguous to China. In the 16th century, Russia began to expand eastward, and not until the latter half of the 17th century did the question of a boundary with China arise. In 1689, both countries concluded the first boundary treaty<sup>107</sup> which defined the eastern sector of the Sino-Russian boundary. In 1727, both countries concluded another treaty<sup>108</sup> delimiting the middle sector of the boundary which now forms the Mongolian-Soviet boundary. As for the western frontier of China, "it was then at the Balkhash Lake, a great distance from the boundary of Czarist Russia."<sup>109</sup>

The Chinese regarded the treaties signed by China with Russia in the second half of the 19th century as the result of Czarist collusion with Western countries pursuing an aggressive expansionist policy.<sup>110</sup> To the Chinese Communist regime, it appeared that within the short space of half a century the Czarist Government had forced China to sign a series of unequal treaties, by which Russia annexed more than 1.5 million square kilometers of Chinese territory.<sup>111</sup> Vast areas were lost to China in the Manchurian area by the Treaty of Aigun<sup>112</sup> (account for 600,000 square kilometers) and the Treaty of Peking<sup>113</sup> (400,000 square kilometers). In the Sinkiang area, territory was lost through the Protocol<sup>114</sup> of 1864 (440,000 square kilometers) and the Treaty of St. Petersburg of 1881<sup>115</sup> (70,000 square kilometers).

The Chinese also pointed out that all of these treaties were declared "null and void" by Lenin on September 27, 1920.<sup>116</sup> Lenin's declaration stated that the Soviet Government "declares null and void *all* the treaties concluded with China by the former Governments of

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106. Soviet Statement of Mar. 29, 1969, *supra* note 82.

107. Nerchinsk Treaty of Peace and Boundaries, Aug. 27, 1689, China-Russia, *reprinted in* E. HERTSLET, II TREATIES BETWEEN CHINA AND FOREIGN POWERS 437-38 (1908).

108. Burisky Treaty (sometimes referred to as Bur Treaty), Aug. 20, 1729, China-Russia. Partial English text of Boundary Protocol in TAI-SUNG AN, THE SINO-SOVIET TERRITORIAL DISPUTE 171-78 (1973).

109. Soviet statement of Mar. 29, 1969, *supra* note 82.

110. *Id.*

111. *Id.*

112. Treaty of Aigun, *supra* note 35.

113. Treaty of Peking, *supra* note 36.

114. Tahcheng Protocol, *supra* note 37.

115. Treaty of St. Petersburg, *supra* note 38.

116. Soviet statement of Mar. 29, 1969, *supra* note 82.

Russia, renounces *all* seizure of Chinese territory, and *all* Russian concessions [emphasis supplied] in China, without any compensation and forever, all that had been predatorily seized from her by the Czar's Government and the Russian Bourgeoisie."<sup>117</sup> Furthermore, by the 1924 Agreement with China,<sup>118</sup> the Soviet Government agreed to annul all conventions, treaties, agreements, protocols and contracts concluded between the government of China and the Czarist Government and to replace them with instruments based on equality, reciprocity and justice. Such new agreements would be in harmony with the spirit of the Declarations of the Soviet Government of the years of 1919 and 1920 to re-demarcate their national boundaries.<sup>119</sup>

The Russian Government objected to the Chinese argument and reiterated that the 19th century treaties were "equal" treaties signed by representatives of both governments and "should retain their force as inter-state documents of both countries up to the present time."<sup>120</sup> With regard to the Soviet renunciation of "unequal" treaties following the Bolshevik Revolution, the Russian Government of 1969 argued that renunciation involved only such treaty rights as extraterritoriality and spheres of influence. Furthermore, since the Soviet declarations of 1919<sup>121</sup> and 1920<sup>122</sup> and the Sino-Soviet agreement of 1924<sup>123</sup> did not indicate that the treaties defining the location of the present Sino-Soviet border were included among the unequal or secret treaties, there could be no discussion of their abrogation or revision.

The Chinese view does not maintain that all treaties imposed on China in the past are unequal and therefore illegal and void. The Peking Government has not taken unilateral action to denounce the treaties in question because of their "inequality." What Peking has insisted on is that the Soviets must admit that the treaties are "unequal" and that new "equal" treaties should be negotiated in their stead. Although the Peking Government has not directly invoked the doctrine of *rebus sic stantibus*, their attitude and actions conform with that principle of

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117. *Id.*

118. Agreement on Principles for the Settlement of the Questions Between the Republic of China and the Union of Soviet Socialist Republics, May 31, 1924. This agreement consists of an Agreement on General Principles, an Agreement for the Provisional Management of the Chinese Eastern Railway, seven declarations and an exchange of notes. English text in 37 L.N.T.S. 176 (1925). See also TAO SHING CHANG, *supra* note 46, at 119-27.

119. Soviet Statement of Mar. 29, 1969, *supra* note 81.

120. Soviet Note on Border Conflict with China, *supra* note 98, at 10.

121. The Declaration of 1919, China-U.S.S.R. [1924] CHINA YEARBOOK 868-70.

122. The Declaration of 1920, China-U.S.S.R. [1924] CHINA YEARBOOK 870-72.

123. Agreement on Principles for the Settlement of the Questions Between the Republic of China and the Union of Soviet Socialist Republics, *supra* note 118.

international law. In spite of the divergent opinions on the application of this doctrine, international lawyers generally agree that a fundamental change of circumstances can be a legitimate reason for demanding the revision or termination of a treaty and that a party invoking the doctrine should seek release from treaty obligations through diplomatic negotiations and not through unilateral denunciation.<sup>124</sup>

The Russian Government has refused to recognize the "unequal" nature of these boundary treaties for fear of putting themselves in an untenable legal position which might allow the Chinese to ask for more concessions on the entire frontier in the future. And perhaps other countries with contiguous borders such as Finland, Rumania or Poland might apply the same principles to other border questions.

Third, is there a boundary question between China and the Soviet Union? The March 29 Soviet statement pointed out that the 1924 Agreement did not consider the boundary treaties "as being among the unequal treaties" and that "there was no talk of their being annulled."<sup>125</sup> The May 24 Chinese statement characterized the Soviet assertion as "juggling with history, adapting it to its territorial claims."<sup>126</sup> In fact, China and the Soviet Union, in pursuance of the 1924 Agreement, had held talks in 1926<sup>127</sup> to discuss the re-damarcation of the boundary and the conclusion of a new treaty, but no new agreement was reached.<sup>128</sup>

The Chinese statement further asserted: "There exists a boundary question between China and the Soviet Union not only because Czarist Russia annexed more than 1.5 million square kilometers of Chinese territory by the unequal treaties it imposed on China, but also because it crossed in many places the boundary line stipulated by the unequal treaties and further occupied vast expanses of Chinese territory."<sup>129</sup> The statement pointed out two examples. In the Pamir area, Czarist Russia occupied more than 20,000 square kilometers of Chinese terri-

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124. See H. BRIGGS, *supra* note 52, at 917-18. In regard to border disputes, it should be noted that Article 62 of the 1969 Convention on the Law of Treaties specifically excludes the application of the doctrine, *rebus sic stantibus*, to treaties establishing boundaries. Convention on the Law of Treaties, May 23, 1969, 8 INT'L LEGAL MATERIALS 702 (1969). The PRC is not a signatory to the convention and has not yet acceded to it.

125. Soviet Statement of Mar. 29, 1969, *supra* note 82.

126. HSINHUA, *supra* note 85, at 6.

127. *Id.* (Talks at Peking, 1926).

128. The Chinese statement of May 24, 1969, pointed out that "owing to the historical conditions at the time, no agreement was reached by the two sides on the boundary question, no re-demarcation of the boundary between the two countries was made and no new equal treaty was concluded by the two countries." HSINHUA, *supra* note 85, at 6.

129. *Id.* at 5.

tory in violation of the "Protocol on Sino-Russian Boundary in the Kashgar Region" of 1884. In the Ussuri and Amur rivers sector, the Soviet Government, in violation of the Treaty of Aigun and the Treaty of Peking as well as the established principles of international law, had gone so far "as to draw the boundary line almost entirely along the Chinese bank and in some places even on China's inland rivers and islands, marking as Soviet territory over 600 of the 700 and more Chinese islands on the Chinese side of the central line of the main channel, which covers an area of more than 11,000 square kilometers."<sup>130</sup> Finally, the Chinese statement said that the mere concluding of the "Sino-Soviet Treaty of Friendship, Alliance, and Mutual Assistance"<sup>131</sup> did not signify the settlement of the boundary question or the non-existence of a boundary question between the two countries.

Fourth, who initially violated the status quo of the boundary? This issue is hotly debated by both parties. The Chinese accused the Soviets of incessant violations of the boundary status quo by pushing Soviet patrol routes into Chinese territory, building military installations within Chinese territory, assaulting or kidnapping Chinese border inhabitants, sabotaging Chinese production and carrying out provocative and subversive activities.<sup>132</sup>

For their part, the Soviet Government accused the Chinese Government of pursuing a policy of expansion.<sup>133</sup> Russia claimed that China was not on good terms with neighboring countries because of claims against their territories. The Chinese response to the accusation pointed out that "the whole world knows that since the founding of the People's Republic of China, the Chinese Government has satisfactorily settled complicated boundary questions left over by history and concluded boundary treaties with neighboring countries such as Burma, Nepal, Pakistan, Mongolia, and Afghanistan, with the exception of the Soviet Union and India."<sup>134</sup>

These four principal controversial points in the Chinese and Russian statements represented the bases for disagreement between the two powers. For resolution of the disagreement, the Russians suggested "consultations" and "clarification on individual sectors of the Soviet-

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130. *Id.*

131. Treaty of Friendship and Alliance, *supra* note 3.

132. HSINHUA, *supra* note 85, at 6. "From October 15, 1964, to March 15 this year, the Soviet side provoked as many as 4,189 border incidents, two and one-half times the number of those it provoked from 1960 to 1964, with its tactics getting even more vicious and its behavior even more unbridled." *Id.*

133. Soviet statement of Mar. 29, 1969, *supra* note 82.

134. HSINHUA, *supra* note 85.



Chinese state border line."<sup>135</sup> The Chinese Government urged peaceful negotiations for the overall settlement of the boundary question and "the conclusion of a new equal treaty to replace the old unequal ones."<sup>136</sup> The Chinese at this time still insisted on Soviet admission of the "unequal nature of the 19th century border treaties as a condition for entering negotiations."<sup>137</sup>

In the midst of a steady stream of border incidents, the relations between the two countries were so tense that, following a new clash at Pacha (which the Russians call Goldinski) Island of Fuyuan District in Heilungkiang Province on July 8, 1969, a Soviet journalist hinted that the Russians might launch a preemptive attack on China.<sup>138</sup> Western journalists also expressed concern over the deteriorating Sino-Soviet relationship.<sup>139</sup>

On October 7, 1969, the Peking Government in a formal statement announced that China had agreed with the Soviet Union to hold negotiations on their border disputes, adding: "There is no reason whatsoever for China and the Soviet Union to fight a war over the boundary question."<sup>140</sup> The statement also disclosed that Chou En-lai had proposed to Kosygin, when they met at the Peking airport, that the two sides should first reach an agreement on the provisional measures for maintaining the status quo of the border, for averting armed conflicts, and for disengagement.<sup>141</sup> The Chinese side further proposed that the armed forces of the Chinese and Soviet sides disengage by withdrawing from, or refraining from entering, all the disputed areas along the Sino-Soviet border.<sup>142</sup>

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135. Soviet Statement of Mar. 29, 1969, *supra* note 82.

136. HSINHUA, *supra* note 85, at 8.

137. T. ROBINSON, *supra* note 57, at 73.

138. N.Y. Times, Sept. 18, 1969, at 5, col. 3.

139. N.Y. Times, Sept. 12, 1969, at 1, col. 8; N.Y. Times, Oct. 1, 1969, at 12, col. 2. The New York Times also expressed "fear" of a Moscow-Peking conflict. In its September 1, 1969, editorial it stated that, incredibly, the Kremlin could be seriously considering a preventive war against China or even an aerial strike at Chinese nuclear facilities. Yet little more than a year earlier it had seemed equally incredible that Soviet troops would invade Czechoslovakia. The editorial concluded: "A decision to strike at China would be the most disastrous miscalculation of all, yet, tragically, there can be no guarantee this decision will not be taken." N.Y. Times, Sept. 1, 1969, at 16, col. 1.

140. Document of the Ministry of Foreign Affairs of the People's Republic of China 47 (Oct. 8, 1964). This document and the statement of Oct. 7, 1969, are published separately by the Foreign Languages Press, Peking (1969).

141. *Id.*

142. *Id.* The disputed areas were those where the two sides disagreed in their delinuations of the boundary line on the maps exchanged during the 1964 Sino-Soviet boundary negotiations.

Moreover this October 7 statement announced two important principles. First, the Chinese Government had never demanded the return of the territory Czarist Russia had annexed by means of the unequal treaties.<sup>143</sup> China officially defined her position, abandoning claims to 1.5 million square kilometers of China's "lost territories." The note pointed out that it was the Soviet Government which "has persisted in occupying still more Chinese territory in violation of the stipulations of these treaties, and moreover, peremptorily demanded that the Chinese Government recognize such occupation as legal."<sup>144</sup> Second, as the Soviets had insinuated that China intended to launch a nuclear war against the Soviet Union, the statement added: "China develops nuclear weapons for defense and for breaking the nuclear monopoly . . . at no time and under no circumstances will China be the first to use nuclear weapons. . . . but at the same time China will never be intimidated by war threats, including nuclear war threats."<sup>145</sup>

Thus, the Peking Government clarified its position in regard to its territorial claims against Russia. China did not demand the return of territory that Czarist Russia annexed in Siberia and Central Asia during the 19th century under "unequal treaties." To effect such a return would require the conclusion of a new equal treaty to replace the old unequal Sino-Russian treaties, new boundary surveys and the erection of boundary markers.<sup>146</sup>

The Soviet Government sent First Deputy Foreign Minister Vasily V. Kuznetsov to Peking, where he met with his Chinese counterpart, Chiao Kuan-hua.<sup>147</sup> The result of the meeting was expressed in a later statement by party leader Brezhnev<sup>148</sup> that the Soviet Union was in favor of a solution of frontier and other problems with China on a lasting and just basis in a spirit of equality, mutual respect and consideration of the interests of both countries.<sup>149</sup>

Up to December of 1969, there were neither more skirmishes nor polemical attacks. But there were reports of border buildups in Peking

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143. *Id.*

144. *Id.*

145. *Id.*

146. "Any side which occupies the territory of the other side in violation of these treaties must, in principle, return it unconditionally to the other side, but necessary adjustment of the areas concerned on the border may be made." *Id.*

147. Meeting of Oct. 20, 1969, at Peking, reported in N.Y. Times, Oct. 28, 1969, at 1, col. 6.

148. Brezhnev was then the First Secretary of the Soviet Communist Party.

149. N.Y. Times, Oct. 28, 1969, at 1, col. 6. Statement by L. Brezhnev, "If the Chinese side also shows good will, then this will be possible." *Id.*

and in the interior of China where the Chinese had begun construction of air raid shelters.<sup>150</sup>

By mid-December, Kuznetsov and his deputy<sup>151</sup> left China for Moscow for consultation because the negotiations were stalemated. Later, the Soviet chief delegate said in Moscow that the two sides were merely reiterating their positions and had not come to grips with an agreed agenda.<sup>152</sup>

Nonetheless, the negotiations were resumed upon the return of Kuznetsov to Peking in mid-January, 1970. Kuznetsov reported that the Soviet Union was willing to make minor concessions if the Chinese would renounce claims to the entire Soviet Far East, which the Chinese had charged was taken from China through "unequal treaties" in the 19th century. Peking refused to talk about the border until the Soviets agreed to a mutual withdrawal of troops to a distance of about sixty miles and to a renunciation of the use of force to settle the disputes. The Soviets refused the requests, insisting that negotiations must be conducted without preconditions.<sup>153</sup> There followed more exchanges of polemical blasts between Moscow and Peking, and border tension was again heightened.<sup>154</sup>

The Chinese and Russian Communists are strange bedfellows. On July 2, 1970, Peking agreed to accept a new Soviet ambassador, Vladimir I. Stepanov, who was unable to assume his position because of poor health.<sup>155</sup> At the same time, First Deputy Foreign Minister Kuznetsov, also ailing, reportedly returned to Moscow.<sup>156</sup> On August 15, a new Soviet negotiator, Deputy Foreign Minister Leonid F. Ilyichev, arrived in Peking for continuing talks.<sup>157</sup> Despite these diplomatic moves,

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150. N.Y. Times, Nov. 7, 1969, at 14, col. 6; N.Y. Times, Nov. 21, 1969, at 3, col. 1.

151. Major General Vadim A. Matrosov, chief of staff of the Soviet border troops.

152. N.Y. Times, Dec. 14, 1969, at col. 7; N.Y. Times, Dec. 21, 1969, at 1, col. 4.

153. N.Y. Times, Mar. 20, 1970, at 3, col. 1.

154. The Chinese received a thinly veiled warning from Pravda. An author writing under the pseudonym of J. Alexandrov wrote on China. An earlier article by Alexandrov had painted a bloodcurdling picture of the anti-communist riot in Prague paving the way for the Soviet army occupation of Czechoslovakia in 1968. The present article depicted the Chinese Government as deliberately provoking anti-Soviet sentiments, trying to use pressure tactics on Moscow's delegation in the current Sino-Soviet negotiations in Peking, and cooperating with the United States in aiding the imperialists to split world communism. The author's pseudonym was a clear signal to Mao to remember the fate of Czechoslovakia and the inherent meaning of the Brezhnev Doctrine if Mao's government remained stubbornly defiant. N.Y. Times, Mar. 30, 1970, at 42, col. 1.

155. N.Y. Times, Aug. 1, 1970, at 3, col. 2.

156. N.Y. Times, Aug. 16, 1970, at 17, col. 1.

157. *Id.*

Chou En-lai still saw China in peril.<sup>158</sup>

Two events in 1971 provoked a statement from the Soviet press that China had fabricated the Russian invasion.<sup>159</sup> In May, the Chinese had tested an ICBM and, in July, President Nixon had announced a projected visit to Peking. Despite the distrust evidenced by both the Soviets and the Chinese, the two sides made further moves to ease tension by concluding a new trade pact in Moscow on August 5, 1971, calling for a tripling of the current trade volume, and the stationing of ambassadors in each other's capitals.<sup>160</sup> The new Soviet envoy, Vasily S. Tolstikov, arrived in Peking in Mid-October 1971. Thus, what the Communists called "state to state" relations were back to normal status. In May 1972, after Nixon had visited China, the Soviet negotiating team in Peking was reportedly allowed to travel to see the country,<sup>161</sup> and Sino-Soviet relations seemed somewhat less strained, yet very fluid and unpredictable.

## V. The Most Recent Developments

The Sino-Soviet territorial dispute is not an isolated issue in the world political scene. Since the Nixon visit to China in February 1972, which opened the door for normal relations between China and the United States in accordance with the Shanghai communiqué of February 27, 1972,<sup>162</sup> the world power structure has been realigned greatly. Militarily Russia is far stronger than China. However, in the event of a Sino-Soviet military conflict, Russia would have to consider the role that the United States might play. Although both China and Russia have accused each other of war-mongering, their relations have not been worsening since 1969 and, on occasion, the two powers have even attempted reconciliations. The border-river agreement of 1977<sup>163</sup> is

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158. N.Y. Times, Dec. 11, 1970, at 11, col. 1. In an interview on December 11 with Edgar Snow, an American journalist, he said: "in the north and in the west is the Soviet Union with a million men and missile forces, and in the east, the United States allied with Japan which is feverishly rearming." *Id.*

159. N.Y. Times, Aug. 21, 1971, at 2.

160. N.Y. Times, Sept. 12, 1969, at 1, col. 8; N.Y. Times, Oct. 1, 1969, at 12, col. 2. However, following the sudden visit to China of Alexei Kosygin who talked with Chou En-lai at the Peking airport on September 11, both sides agreed to have full-scale negotiations on the boundary question in October 1969 in Peking. Later, the news dispatches disclosed that Kosygin also proposed to discuss the resumption of trade talks, reinstatement of ambassadors in Moscow and Peking, and an accord allowing Soviet planes to fly through China to Hanoi.

161. Sing-Tao Jih-Pao, May 27, 1972, at 1.

162. Reprinted in 15 (No. 9) PEKING REVIEW 4-5 (1972).

163. N.Y. Times, Oct. 8, 1977, at 8, col. 3.

one of the examples. Nonetheless, there is no indication of a major breakthrough in the boundary negotiations question.

A brief analysis of the most recent developments indicates that there are four areas of concern: (1) deadlocked negotiations on boundary problems, (2) no acceptance of a non-aggression pact proposal, (3) the possibility of fruitful negotiations on riverine borders and navigation and (4) good prospects for Sino-Soviet reconciliation.

(1) Boundary negotiations are deadlocked: these negotiations have been held off and on at the vice-ministerial level in Peking in strict secrecy since October, 1969, with Soviet Deputy Foreign Minister Ilyichev. To date, neither side has agreed on an agenda, and each remains in basic disagreement about what the talks should cover.

Briefly stated, there are two obstacles to achieving an accord: (a) China's insistence on reaching an agreement on provisional measures to maintain the status quo and stop armed conflict before the negotiations on the boundary alignment, and (b) China's repeated demand that Russia acknowledge for the record that the present Sino-Soviet boundary is the result of "unequal treaties" imposed on China by the Czars, and that a new "equal treaty" should be concluded instead.

The Soviets have refused to accede to these main points<sup>164</sup> and have only expressed a willingness to make minor adjustments in particular frontier areas where boundaries and geography are in obvious conflict. According to Chou En-lai, the Russians even refuse to recognize "objective facts like the existence of disputed areas."<sup>165</sup>

On April 3, 1979, when China announced the decision not to renew the thirty-year Treaty of Friendship, Alliance and Mutual Assistance<sup>166</sup> which will expire in 1980, the government stated that China would be prepared to talk about outstanding issues. Russia, although at first denouncing the Chinese decision not to renew the treaty, responded favorably within a few days. Observers noted that as China is pressing ahead with four modernization programs, it would be beneficial if tensions on the Soviet border could be lessened.<sup>167</sup>

On July 19, 1979, the Soviet embassy in Peking announced that Russia and China had agreed upon negotiations for improving their relations.<sup>168</sup> The talks took place in late September, with the site alternating between Peking and Moscow. China had agreed to the Soviet

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164. N.Y. Times, Feb. 23, 1975, § 1, at 13, col. 1.

165. N.Y. Times, Oct. 29, 1973, at 1, col. 7.

166. Treaty of Friendship, Alliance and Mutual Assistance, *supra* note 5.

167. N.Y. Times, May 23, 1979, at A3, col. 1.

168. Wall Street Journal, July 19, 1979, at 1, col. 3.

proposal, possibly without preconditions, as Brezhnev had wanted in previous meetings.

(2) An issue closely related to the boundary problem is the non-aggression pact proposal. On September 24, 1973, Leonid I. Brezhnev in a speech in the Central Asian city of Tashkent declared that the Soviet Union offered China a non-aggression pact in mid-June but the Chinese leaders failed to reply.<sup>169</sup> He also challenged Chou En-lai to follow up his recent statement of desiring normal relations with Moscow by taking concrete actions.<sup>170</sup>

On November 7, 1974, in reply to the Kremlin leader's challenge, Chou asked for a non-aggression meeting, but linked the idea to a pull-back of forces along the disputed frontier. This concept had been rejected by Brezhnev as "absolutely unacceptable" in a speech in Ulan Bator in 1974 on the occasion of the 50th anniversary of Mongolia's proclamation of a people's republic, only 750 miles from Peking.<sup>171</sup>

(3) In the 1950's, when Russia and China had friendly relations, the Chinese designated the Amur River as the River of Friendship. During that decade, both the Soviet and the Chinese boats traded across the Argun, Amur and Ussuri rivers. Navigation procedures were established by the joint Sino-Soviet Commission for Navigation on Boundary Rivers in 1951.<sup>172</sup> The Commission met alternately in Soviet and Chinese border cities. Regarding the riverine boundary question, the agreement stipulated that traffic in the rivers should follow the main navigational channels regardless of their relationship to the state frontier.<sup>173</sup> A later agreement relaxed the shipping and navigation rules to "mutually provide preferential treatment."<sup>174</sup> Both sides would "take measures in providing gratis whatever transit services are possible for the merchant ships of the two countries—any time of the day as well as night during the navigation season."<sup>175</sup>

As discussed above, one of the factors leading to the 1969 Ussuri border clashes was that China issued some new stringent boundary river regulations. On June 7, 1969, as a measure for de-escalating the tension of the Sino-Soviet relations, the Peking Government agreed to

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169. N.Y. Times, Sept. 25, 1973, at 1, col. 5.

170. *Id.*

171. The Christian Science Monitor, Nov. 27, 1974, at 1, col. 2.

172. D. JOHNSTON & HUNGDAH CHIU, AGREEMENTS OF THE PEOPLE'S REPUBLIC OF CHINA 1949-1967: A CALENDAR 5 (1968).

173. *Id.*

174. *Id.* (Agreement of Dec. 1957) at 76.

175. Jen-Min Jih-Pao, Dec. 23, 1957; Munthe-kaas, *Amur Amendments*, FAR EASTERN ECONOMIC REVIEW 556 (May 26, 1966).

the Soviet proposal of May 23 to reopen meetings of the joint Sino-Soviet Commission for Navigation on Boundary Rivers at Khabarovsk on June 18.<sup>176</sup>

A later development was the Chinese charge of July 8, 1969, that Soviet forces had violated Chinese territory by intruding into Pacha Island in the Amur River near Khabarovsk. Moscow replied that the incident was a Chinese "provocation" designed to abort the river-navigation negotiations.<sup>177</sup> But this time the Chinese heeded the Soviet protest and reached an agreement with the Soviets at the Khabarovsk conference on the governing of navigation of the border rivers for that year.<sup>178</sup> Further talks regarding the matter were scheduled for 1970.<sup>179</sup>

Like the general border negotiations in Peking, the Khabarovsk conference on river navigation was fruitless for nearly five years. On May 23, 1974, the Soviets suddenly became more conciliatory and receptive to the Chinese request for the use of an alternate channel in order to avoid using the seasonal low water channel along the confluence of the Ussuri and Amur near the city of Khabarovsk.<sup>180</sup>

The Chinese and the Soviets did not hold the first border river meeting until August 12, 1977; it had taken three years to establish the meetings. It was reported that the Chinese were seeking improved passage for their vessels at the junction of the Amur and Ussuri rivers.<sup>181</sup>

On October 7, 1977, Moscow and Peking news agencies announced that they had reached limited agreement on rules of navigation on the Ussuri River on their disputed border.<sup>182</sup> According to the agreement, Chinese vessels would be permitted to pass through the north channel of the Ussuri around the Hsia-tzu Islands, where the Ussuri and Amur rivers meet, in spite of the Soviet claim that the channel lay within its territory. "Both sides made it clear when they resumed these talks in the summer that they were focusing on very technical navigation problems and nothing else."<sup>183</sup> Apparently the agreement

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176. Text of agreement *reprinted in* 12 PEKING REVIEW 3 (May 16, 1969).

177. O. CLUBB, *supra* note 48, at 404.

178. *Id.* at 506.

179. *Id.*

180. N.Y. Times, May 24, 1974, at 5, col. 1. Some observers presented the theory that it was designed by the Soviets to put more public pressure on Peking to release a captured Soviet helicopter and its crew, which had strayed into China's Sinkiang region on March 14, 1974. The Chinese claimed the helicopter was on an espionage mission; the Russians said it was on a mercy flight to help an ailing bodyguard.

181. N.Y. Times, Aug. 13, 1977, at 4, col. 4.

182. N.Y. Times, Oct. 8, 1977, at 8, col. 3.

183. *Id.*

does not affect the larger problem of the Chinese territorial claims against Russia. Still it is a significant step toward reconciliation between the two Communist governments.

(4) The analysis presented above persuades this writer to speculate that there are good prospects for a Sino-Soviet reconciliation. With the question of river navigation settled, the Chinese and the Soviets should be ready to move to solve their general territorial issues. There are indications that a resolution of the general territorial issues can be achieved. First, on October 27, 1973, Chou En-lai reaffirmed that China had never expressed the desire to recover "all the territories" lost to Russian control during the 19th century as a result of "unequal treaties."<sup>184</sup> The Russians, however, insisted that China had made such a claim. As recently as December 1975, the Soviet press still cited the inflated figure of 1.5 million square kilometers (600,000 square miles) as that claimed by China, but on April 28, 1976, a *Pravda* article conceded that the Chinese territorial claim involved 33,000 square kilometers (about 13,000 square miles).<sup>185</sup> The reduction in the size of the disputed area was a significant concession, which provides both sides with a reasonable basis for negotiation and greatly narrows the areas of dispute.

In May 1978, a border incident occurred in Hulin County of Heilungkiang Province.<sup>186</sup> The Chinese claimed that a Soviet helicopter, 18 boats, and 30 soldiers landed on the Chinese bank and penetrated two and a half miles inland, shooting and wounding a number of people. After receiving the Chinese note of protest, the Soviets quickly offered an apology, but said a border patrol had mistakenly landed on the Chinese river bank in search of an "armed criminal." The Chinese disputed the Soviet version of the incident but made no further demands.<sup>187</sup> The Chinese not only refrained from armed counter-attack but also settled the issue amicably.

China in 1979 is in the hands of pragmatic leaders, such as Hua Kuo-feng,<sup>188</sup> Teng Hsiao-ping,<sup>189</sup> and Chan Yun,<sup>190</sup> all different from those in power in the late 1960's. The present leaders urge moderniza-

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184. N.Y. Times, Oct. 29, 1973, at 8, col. 1.

185. N.Y. Times, Apr. 29, 1976, at 10, col. 1.

186. N.Y. Times, May 12, 1978, at 1, col. 3; N.Y. Times, May 14, 1978, § 1, at 3, col. 3. See also Maxwell, *Why the Russians Lifted the Blockade at Bear Island*, FOREIGN AFFAIRS 138-45 (Fall 1978).

187. N.Y. Times, May 14, 1978, § 1, at 3, col. 3.

188. Hua Kuo-feng, Chinese Communist Party Chairman and Premier.

189. Tan Hsiao-ping, Vice-Premier.

190. Chan Yun, Vice-Premier (also considered to be a powerful economic figure).



tions to make China a 20th century world power. Lessening the northern border tension and accommodating to a certain extent the border issues are equal measures in achieving modernization. On the other hand, the Soviet opportunity for preemptive strikes against China has considerably diminished since the Chinese exploded atomic bombs in 1964 and tested an intercontinental ballistic missile (ICBM) in 1971. In other words, the Soviets have lost their great military superiority. Internationally, China has improved relations not only with the United States and Japan, but also with the Common Market countries in Western Europe as well as with India, leaving Vietnam on the southern border as the only adversary besides Russia.

The possibility of a full scale war between China and Russia is greatly reduced but the road of reconciliation leading toward a comprehensive settlement of the borderland issues is long and treacherous. Should there be a Sino-Soviet conflict, the result would not only undermine Soviet predominance in Eastern Europe but could split the world Communist movement along racial lines and even totally destroy the movement itself without guaranteeing an end to the conflict.<sup>191</sup>

## VI. Possible Settlements

There is no doubt that the Soviet Union has long had a basic strategic interest in Manchuria, Mongolia and Sinkiang, and this remains true today. On the other hand, any Chinese Government which aims to unify China also wishes to exercise full control over these borderlands. As Mongolia is becoming more aligned with Russia, the entire Chinese frontier is becoming a region of direct confrontation between the two highly dynamic nationalistic states. The Chinese borderlands are so insecure that they are exposed to Russian attacks at any time and Soviet borderlands are similarly exposed.

The Chinese northern border situation has been very tense and dangerous, with or without China's territorial claims against the Soviet Union. So far as the Chinese negotiating principles are concerned, Russia will not back down. Historically speaking, the Soviet withdrawal from Manchuria and Sinkiang in 1955 was very unusual. At present, Russia will not discuss further retreat by granting concessions to Mao's sweeping territorial claims without a war.

In this writer's opinion, peaceful negotiations seem possible only in the following areas:

(a) in the Pamir area where the Chinese claim that Russia has oc-

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191. TAI SUNG AN, *THE SINO-SOVIET TERRITORIAL DISPUTES* 124 (1973).

cupied more than 20,000 square kilometers of Chinese territory in violations of the stipulations of the Protocol on Sino-Russian Boundary in the Kashgar Region;<sup>192</sup>

(b) in the sector of the Ussuri and Amur Rivers where the Chinese charge Russia with violating the treaties of Aigun<sup>193</sup> and Peking<sup>194</sup> by drawing the boundary line along the Chinese bank, thus causing some 600 islands amounting to 1,000 square kilometers to become Soviet territory; and

(c) in the area of the Ili boundary in Sinkiang where, by the 1881 Treaty of St. Petersburg,<sup>195</sup> Russia retained some territory near Ili even though there had been a promise to return all the occupied area to China in 1871.<sup>196</sup>

Outer Mongolia remains the knotty problem. It shields almost a third of the length of the Sino-Soviet frontier. But the Nationalist and Communist Chinese have claimed it as a part of China. From a purely geographical point of view, China looked like a heart; now, without Outer Mongolia, the heart shape is incomplete. In a way, when Mongolia is in enemy hands, it becomes a dagger in China's heart. In 1864, when General Tso Tsung-tang<sup>197</sup> advocated the military recovery of Sinkiang, he argued that "to recover Sinkiang is for the protection of Mongolia, [and] to protect Mongolia is for the safety of the national capital."<sup>198</sup> In other words, Mongolia is vital for Peking's own safety.

But, having no alternative, both the Nationalist and Communist regimes have accepted the independent status of Outer Mongolia. In 1962, a boundary agreement was reached with the Chinese favoring the Mongolians all along the lengthy border with Sinkiang and Inner Mongolia.<sup>199</sup> Perhaps the best result China can hope to achieve now is to convert Outer Mongolia into a buffer zone by matching Russian influence in Ulan Bator.

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192. *Id.* at 115.

193. Treaty of Aigun, *supra* note 35.

194. Treaty of Peking, *supra* note 36.

195. Treaty of St. Petersburg, *supra* note 38.

196. L. CHANG, CHUNG WAI TIAO YUEH TSUNG LUN (TREATY RELATIONS BETWEEN CHINA AND FOREIGN POWERS) 33 (1970). This is the author's work dealing with the Chinese treaty relations with foreign powers from 1689 to the mid 1950's.

197. Tso, an able Chinese general, was charged with recovery of Sinkiang in 1875.

198. L. CHANG, *supra* note 196.

199. At present, the Chinese-Mongolian boundary agreement has not been officially translated and published by either government. But it was understood that in most instances, the Chinese abandoned their claims in favor of the Mongols. Cf. F. WATSON, *supra* note 26, at 173-76. However, for the Chinese text, see Chung Hwa Jen Ming Kung Ho Kuo Tiao-Yueh Tsi (PRC, Collections of Treaties) Series II, 1962, at 19-36.

There is another territory closely related to Outer Mongolia: Urianghai, generally known as Tannu Tuva, in the northwest, which China could well claim. The area involves 64,000 square miles, a population of 70,000, and considerable natural resources. The Tahcheng Protocol<sup>200</sup> (or Tarbagatai), though it principally dealt with the Sino-Russian frontier in Sinkiang, touched upon the northern frontier of Outer Mongolia. Later the Russians claimed that Urianghai was within the Chinese dominions. The Russians, however, first occupied it in 1911 in connection with the support of the Outer Mongolian autonomy movement. Three years later, they detached it as a Russian protectorate. The Chinese troops recovered it when they returned to Outer Mongolia after the Russian Revolution. In 1922, however, the Russian army was able to create a communist regime in Outer Mongolia and a "Tuvanian People's Republic" in Urianghai. By 1944, it was absorbed into the Soviet Union as an autonomous region and later as an autonomous republic.<sup>201</sup> The Republic of China has never ceased protesting this situation and has claimed the region in her maps. Both the 1945<sup>202</sup> and 1950<sup>203</sup> treaties with the Soviets ignored the problem; but the Peking Government could certainly reassert her claim with a strong case.

A commentator has described the Soviet-Chinese differences as "the Coldest War" and has maintained that "[w]hen historians in the year 2000 look back on the final quarter of this century, they will see that it was the present Sino-Soviet relationship that has shaped their world."<sup>204</sup>

The Soviet invasion of Afghanistan on December 27, 1979, has underscored the vulnerability of the borderlands contiguous to the Soviet Union. The Soviet actions have given credibility to Mao Tse-tung's concern about China's security. Indeed, frontier security disputes are shaping the world today.

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200. Tahcheng Protocol, *supra* note 37, at 462-78.

201. See CHIANG KAI-SHEK, *supra* note 1.

202. Treaty of Friendship and Alliance, *supra* note 3.

203. Treaty of Friendship, Alliance and Mutual Assistance, *supra* note 5.

204. C. SULZBERGER, *THE COLDEST WAR: RUSSIA'S GAME IN CHINA* 6 (1974).